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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,060	02/03/2004	Steven Rehkemper	4004013.0095	4534

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EXAMINER

THANH, QUANG D

ART UNIT PAPER NUMBER

3764

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/772,060	Applicant(s) REHKEMPER ET AL.	
	Examiner Quang D. Thanh	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 8-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/14/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of group I, claims 1-7 in the reply filed on 6/28/2006 is acknowledged. Claims 8-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "***the*** means to support" lacks antecedent basis and is unclear to the examiner what is the means to support?

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Haddad et al. (5,570,709). Haddad discloses an oral cleaning device (fig. 1) having a means for dispensing pressurized fluid out of an aperture 40 define by the device and a flossing head assembly that includes a piece of flossing material 46 supported over the aperture such that dispense pressurized fluid runs over said piece of flossing material (fig. 3 and 6); wherein the flossing head assembly includes a pair of arms 48/58 extending in an arc from a center region 54 creating a cavity therebetween (fig. 6), the pair of arms having the means to support the piece of flossing material over said cavity (fig. 6); wherein the flossing head assembly has a grooved region 50 sized to removably support the center region 54 (fig. 6), whereby the center region and thus the pair of arms with the flossing material is removable from the flossing head assembly (fig. 6).

5. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Mochel (5,261,430). Mochel discloses a flossing head assembly 3 (fig. 1) having at least an upper portion (fig. 1), the assembly comprising: a center region 12a,b,c (fig. 1) having a pair of arms 8a and 8b (fig. 1) extending therefrom to create a cavity region between said pair of arms, the pair of arms supporting a piece of flossing material 7 over said cavity (fig. 1); and a grooved region 10 in the upper portion sized to removably support the center region (fig. 1).

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6. Claim 7 is rejected under 35 U.S.C. 102(e) as being anticipated by Dougan et al. (7,059,334). Dougan et al. discloses a flossing head assembly (fig. 1) having at least an upper portion, the assembly comprising: a center region 23 (fig. 3a) having a pair of arms 21 (fig. 3a) extending therefrom to create a cavity region between said pair of arms, the pair of arms 21 supporting a piece of flossing material 5 over said cavity; and a grooved region 10 in the upper portion sized to removably support the center region 23 (fig. 3a).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sale et al. (6,164,967) in view of Haddad et al. '709. Sale et al. discloses an oral cleaning device comprising: a reservoir body 21 having a lower aperture and an upper aperture 28 (fig. 5b); a manual (fig. 7) operable removable (fig. 2) pump 19 attached to the reservoir body in communication with the lower aperture (fig. 7), the manual operation of the removable pump permit a user to increase pressure within reservoir body the such that the liquid becomes pressurized ; a neck and head assembly 4 (fig. 5a) having an outlet aperture 71 for expelling pressurized liquid (fig. 5b); a mechanism 88 in communication with the neck and head assembly and the reservoir body for controlling

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the flow of pressurized liquid out of the device (fig. 7); except for a flossing head secured to the neck/head assembly that includes a piece of flossing material that is supported over the outlet aperture such that expelled pressurized liquid flows over said piece of flossing material. However, Haddad teaches an oral cleaning device (fig. 1) having a means for dispensing pressurized fluid out of an aperture 40 define by the device, and a flossing head assembly that includes a piece of flossing material 46 supported over the aperture such that dispense pressurized fluid runs over said piece of flossing material (fig. 3 and 6); wherein the flossing head assembly includes a pair of arms 48/58 extending in an arc from a center region 54 creating a cavity therebetween (fig. 6), the pair of arms having the means to support the piece of flossing material over said cavity (fig. 6); wherein the flossing head assembly has a grooved region 50 sized to removably support the center region 54 (fig. 6), whereby the center region and thus the pair of arms with the flossing material is removable from the flossing head assembly (fig. 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Sale's reference, to include a flossing head assembly having all the features as taught by Haddad, for the purpose of loosening food particles and washing those particles away by the jets of water (col. 4, lines 30-32).

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

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obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-3 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,689,078 in view of Haddad. Claim 1 of U.S. Patent No. 6,689,078 discloses all the claimed features except for a flossing head secured to the neck/head assembly that includes a piece of flossing material that is supported over the outlet aperture such that expelled pressurized liquid flows over said piece of flossing material. However, Haddad teaches an oral cleaning device (fig. 1) having a means for dispensing pressurized fluid out of an aperture 40 define by the device, and a flossing head assembly that includes a piece of flossing material 46 supported over the aperture such that dispense pressurized fluid runs over said piece of flossing material (fig. 3 and 6); wherein the flossing head assembly includes a pair of arms 48/58 extending in an arc from a center region 54 creating a cavity therebetween (fig. 6), the pair of arms having the means to support the piece of flossing material over said cavity (fig. 6); wherein the flossing head assembly

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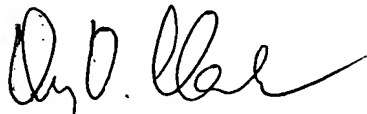
has a grooved region 50 sized to removably support the center region 54 (fig. 6), whereby the center region and thus the pair of arms with the flossing material is removable from the flossing head assembly (fig. 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the U.S. Patent No. 6,689,078 reference, to include a flossing head assembly having all the features as taught by Haddad, for the purpose of loosening food particles and washing those particles away by the jets of water (col. 4, lines 30-32).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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